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May 22, 2006

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 22, 2005

Case Number: TSO-0337

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX(hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to maintain a DOE security clearance. In June 2004, the police arrested the individual and charged him with "Reckless Driving" and "Driving Under the Influence" (DUI). After the individual reported his arrest to the DOE, the DOE conducted a Personnel Security Interview (PSI) with the individual in March 2005 to obtain information regarding the circumstances surrounding the arrest and the extent of the individual's alcohol use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for an agency-sponsored mental evaluation. The DOE consultant-psychiatrist examined the individual in June 2005, and memorialized his findings in a report on July 15, 2005 (Psychiatric Report or Exhibit 11). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from alcohol abuse, a mental illness which, in the DOE consultant-psychiatrist's opinion, has caused significant defects in the individual's judgment and reliability in the past and is likely to do so in the future. In addition, the DOE consultant-psychiatrist opined that the individual (1) is

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

currently a user of alcohol habitually to excess and (2) has used alcohol habitually to excess during other periods of time, *i.e.*, 1977 to 1978, 1982 to 1986, and in 2004. At the time of the psychiatric evaluation, the DOE consultant-psychiatrist did not believe that the individual had shown adequate evidence of rehabilitation or reformation from his alcohol abuse or his habitual, excessive use of alcohol.

In November 2005, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of four potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections f, h, j and l (Criteria F, J, H and L respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations and requested an administrative review hearing. On January 5, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing in the case in accordance with the Part 710 regulations.

At the hearing, four witnesses testified. The LSO called one witness and the individual presented his own testimony and that of two witnesses. In addition to the testimonial evidence, the LSO submitted 38 exhibits into the record; the individual tendered 13 exhibits.

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<sup>2</sup> Criterion F relates to information that a person “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.30.” 10 C.F.R. § 710.8(f). Criterion H concerns information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j). Criterion L relates, in relevant part, to information that a person has “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . .” 10 C.F.R. § 710.8 (l).

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites four potentially disqualifying criteria as bases for suspending the individual's security clearance, *i.e.*, Criteria F, H, J and L.

With respect to Criterion F, the LSO questions the individual's candor because it recently learned that the individual did not provide full, frank and truthful information during a Personnel Security Interview (PSI) in 1991 about the extent of his past illegal drug use. The LSO relied on the information provided by the individual during the 1991 PSI to resolve the individual's past use of illegal drugs, to offer him a DOE Drug Certification, and to grant him a DOE security clearance. From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of

eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995) (affirmed by OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000). In addition, a person's deliberate falsification raises a security concern that he or she might be susceptible to coercion, pressure, exploitation, or duress arising from the fear that others might learn of the information being concealed. *See Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999), *aff'd*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000).

Regarding the Criterion H allegations at issue, they are based solely on the opinion of the DOE consultant-psychiatrist that the individual suffers from alcohol abuse, a mental illness which, according to the DOE consultant-psychiatrist causes, or may cause, a significant defect in the individual's judgment or reliability. From a security perspective, a mental illness or condition may cause a significant defect in a person's psychological, social and occupational functioning and could raise questions about the person's judgment, reliability and stability. *See generally*, Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27.

As for Criterion J, the LSO relates the following information. First, a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse in 2005. Second, the DOE consultant-psychiatrist opined that the individual was a user of alcohol habitually to excess at the time he conducted the psychiatric examination and during other discrete periods of time in the 1970s, 1980s and in 2004. Third, the individual's alcohol consumption through the years has led to three alcohol-related arrests, the most recent in June 2004. The information set forth above clearly raises questions about the individual's alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.

Lastly, the LSO questions the individual's honesty, reliability, and trustworthiness under Criterion L based on the individual's admitted violation of the terms of his probation relating to his June 2004 DUI. Specifically, the court placed the individual on supervised probation for a one-year period. One of the conditions of his probation was that he abstain from alcohol during the probationary period. The individual readily admits to drinking weekly and violating the terms of his probation. The individual's unwillingness or inability to comply with rules and regulations raises serious doubts about his judgment, trustworthiness, reliability, and ability to properly safeguard classified information.

#### **IV. Findings of Fact**

Most of the facts in this case are uncontested. Where there are discrepancies in the record, I will note them as appropriate.

The individual began consuming alcohol at age 13 or 14. Ex. 11 at 4. The individual estimates that he was intoxicated about 20 times in total during the 7 and 8<sup>th</sup> grades and in high school. *Id.* at 13. At age 18, the individual was arrested twice for alcohol-related offenses. In April 1977, he was arrested and charged as a “Party to a DWI.” Ex. 36 at 20, Ex. 28. On the day in question, the individual’s friend was the driver of a vehicle and the individual was a passenger in the vehicle that the police found parked on the side of a road with its motor running. Ex. 36 at 20. A police officer arrested both the individual and his friend when he determined that they both were intoxicated.

The individual’s second arrest occurred in December 1977 when he, a minor at the time himself, was charged with “Providing Alcohol to a Minor.” *Id.* at 21-22, Ex. 33 at 39. The basis of the charge was that the individual had provided alcohol for a party that was attended by minors. *Id.*

Between 1982 and 1987, the individual estimates that he got intoxicated twice a month while in college. Ex. 11 at 14. The individual eventually dropped out of college, foregoing a degree. *Id.*

According to the individual, he frequented bars as often as four to five times a week between 1990 and 1993. Ex. 33 at 51-52. He typically consumed between two to four beers a night while at the bars during this time period. *Id.*

In 1994, the individual got married. *Id.* at 52. He and his wife divorced in January 2001. Ex. 11 at 6. According to source material in the Office of Personnel Management (OPM) investigative file, the individual’s ex-wife reported that the individual drank alcohol on a daily basis while they were married. Ex. 38 at 35. The ex-wife reported that her former husband consumed three to six beers during the weekdays and a six-pack of beer and one to two shots of whiskey on each weekend night. *Id.* The ex-wife also reported that if the individual drank a 12-pack of beer, he would become sarcastic, mean and verbally abusive. *Id.* She estimated that the individual got drunk one to two times a month during their marriage. *Id.*

After his divorce, the individual routinely consumed 48 ounces of beer three times a week. Ex. 33 at 72. By his own account, the individual’s alcohol consumption increased beginning in 2003 when he began dating. Tr. at 107. He related during the 2005 PSI that he consumed alcohol “at least every night” while he was dating a woman that will be referred to as his “girlfriend.” Ex. 33 at 78. At the hearing, the individual testified that alcohol caused a lot of issues between him and his girlfriend, such as arguing, fighting and meanness. Tr. at 108. The individual estimates that between 2003 and 2004, he often consumed as much as a liter of liquor every other week. *Id.* at 110. According to the individual, his drinking increased again in October 2003 when his father died. *Id.* at 111. He admitted to drinking a whole fifth of whiskey between 9:00 pm and 6:00 am on a few nights. Tr. at 36. Also, he admitted to drinking one drink per hour over a nine-hour period three or four times between June 2003 and June 2004. *Id.* at 38. During this same time period, the individual told the DOE consultant-psychiatrist that he had 20 hangovers and

was so “hung over” on two occasions that he could not awaken his children in time for them to go to school. *Id.* at 36. The individual stated that he terminated his relationship with his girlfriend in April 2004, after which he allegedly moderated his drinking habits. *Id.* at 80- 81.

In June 2004, the individual was arrested and charged with DUI and reckless driving. Ex. 20. A breath alcohol content test (BAC) administered to the individual shortly after his arrest yielded a result of .14. Ex. 13. The individual pled no contest to the charges and received the following sentence: (1) 90 days in jail, 87 days suspended, (2) a \$500 fine, (3) 48 hours of community service, (4) one year of supervised probation, (5) completion of DUI school, and (6) completion of six alcohol education sessions. As a condition of the individual’s probation, the court ordered him to refrain from purchasing, possessing or consuming any alcohol during the one year probationary period (from October 2004 to October 2005), and from entering a bar or other liquor establishment whose primary purpose is to sell or serve alcohol. Ex. 15. The individual admitted that he remained sober for the first six months of his probation but then resumed drinking in contravention of the court order. Ex. 33 at 82; Tr. at 122. During the 2005 PSI, the individual told the Personnel Security Specialist that he has consumed two to three alcoholic beverages every week since January 2005. Ex. 33 at 84.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>3</sup> After due deliberation, I have determined that the individual’s access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### **A. Criterion F**

According to the LSO, the individual provided false information regarding the extent of his past illegal drug use during a PSI conducted in 1991. Specifically, the individual admitted during the 1991 PSI to having used marijuana, hashish, psilocybin mushrooms, and cocaine. Ex. 36 at 35-55. The individual denied using LSD and methamphetamines during the 1991 PSI. *Id.* at 53. The LSO relied on the information provided by the individual in 1991 as the basis for offering the individual a Drug Certification and

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<sup>3</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

ultimately granting the individual his security clearance. During the psychiatric examination conducted by the DOE consultant-psychiatrist in June 2005, the individual admitted that he had used LSD once and methamphetamines twice prior to receiving his security clearance in 1991. Ex. 11 at 14.

In his response to the Notification Letter, the individual admitted that he had lied about his past illegal drug usage during the 1991 PSI but contends that “his conduct during the last 15 years more than demonstrates his integrity and trustworthiness.” Response at 1.

It is undisputed that the individual deliberately lied about the extent of his past illegal drug use during the 1991 PSI. This conduct is a very serious matter in my opinion. In addition, the individual concealed his lie from the LSO for a period of 15 years, during which he could have been susceptible to blackmail, coercion or duress. The individual did not offer any explanation for his motivation in lying in 1991 and his subsequent cover-up for more than a decade.

Cases involving verified falsifications are difficult to resolve because there are neither experts to opine about what constitutes rehabilitation or reformation from lying nor security programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of a person, the facts surrounding the falsification and the individual’s subsequent history in order to assess whether a person has rehabilitated himself from the falsehood and whether restoring the security clearance would pose a threat to national security. *See Personnel Security Hearing*, Case No. VSO-0440, 28 DOE ¶ 82,807 (2001) (affirmed by OSA, 2001). The key issue is whether the individual has brought forth sufficient evidence to demonstrate that he now can be trusted to be consistently honest and truthful with the DOE. For the reasons discussed below, I find that the individual has not brought forth convincing evidence on this matter.

As an initial matter, in previous administrative review cases, Hearing Officers have held that acknowledging wrongdoing and taking full responsibility for one’s actions are important and necessary steps in the process of reformation. *Personnel Security Hearing* (Case No. TSO-0024), <http://www.oha.doe.gov/cases/security/tso0024.pdf>. (2004); *Personnel Security Hearing* (Case No. VSO-0440), 28 DOE ¶ 82,807 (2001) (affirmed by OSA, 2001). Hearing Officers have also held that it is the subsequent pattern of responsible behavior that is the key to abating security concerns that arise from lying. *See Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999), *aff’d*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000) and cases cited therein. In this case, the individual admitted in his Response to the Notification Letter that he had lied about the extent of his illegal drug use during the 1991 PSI. After listening to the individual’s testimony and observing his demeanor at the hearing, however, I am not convinced that he fully understands the seriousness of his lying. The individual did not express any remorse at the hearing for his deliberate falsehood and provided no assurance that he will provide candid responses in the future to the DOE about matters potentially impacting upon his access authorization. He claims simply that his conduct between 1991 and 2005 demonstrates his integrity and trustworthiness. I do not agree with the individual’s viewpoint on this matter. Instead, I find that sufficient

time<sup>4</sup> has not elapsed since the individual revealed his lie in June 2005 for me to find that he has demonstrated a pattern of being truthful to the DOE. In fact, the record suggests that the individual either lied to the LSO in his 2005 PSI or at the hearing. During the 2005 PSI, the individual told the personnel security specialist that “when I have my kids I don’t drink at all - - .” Ex. 33 at 83. At the hearing, the individual was asked whether he drinks alcohol when he has custody of his children. Tr. at 117. The individual responded, “Only after they’ve gone to bed, I . . . every now and then have a little whiskey with some ice . . .” *Id.* at 118. The individual’s inconsistent statement about a matter that is relevant and material to determination regarding his eligibility for a security clearance, his alcohol consumption, undermines his assertion that he had comported himself in an upright manner since the 1991 PSI. In view of all the foregoing considerations, I find that the individual has not mitigated the security concerns associated with Criterion F at issue in his proceeding.

## **B. Criteria H and J**

The DOE consultant-psychiatrist clearly articulated in his Psychiatric Report and testified convincingly at the hearing why the individual suffers from alcohol abuse and is a user of alcohol habitually to excess. Ex. 11, Tr. at 28-75. In addition, the individual’s own expert, a highly credentialed psychiatrist, testified that the individual suffered from alcohol abuse up until June 2004 and currently bears the diagnosis “Alcohol Abuse in Partial Remission.” Tr. at 75, 82. In view of the psychiatric consensus regarding the alcohol diagnosis in this case, the pivotal question at issue is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his alcohol abuse and his habitual, excessive alcohol use.

### **1. The Individual’s Testimony and his Documentary Evidence**

The individual argues that there is no relationship between his consumption of alcohol and his work. Tr. at 115. He claimed at the hearing that alcohol has not affected his work although he admitted that he had shown up to work “hung over” on several occasions. *Id.* at 118. He submitted into evidence his good performance evaluations and an award that he received for excellent work on a particular project. *See* Exhibits I, J, K and L.

He testified that he currently drinks four to five shots of whiskey each week (*id.* at 149) and intends to continue drinking two to three drinks each week. *Id.* at 164. He explained that he drinks because he is lonely and that the only social activity in his town is going to bars. *Id.* at 161.

At the hearing, the individual offered some interesting insights into his true feeling regarding his alcohol consumption and its effect on his security clearance. He testified that he does not “like big brother getting into my life and telling me what I need to do and

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<sup>4</sup> The time for assessing the individual’s reformation or rehabilitation from his lying begins from the date that he admitted his lie to the DOE consultant-psychiatrist, *i.e.*, June 2005. *See Personnel Security Hearing*, Case No. TSO-0100, <http://www.oha.doe.gov/cases/security/tso0100.pdf>.



what I don't need to do." *Id.* at 121. He added that "as long as I'm not hurting anyone or breaking the law, I think that I'm okay." *Id.* He explained that he remained sober for six months after his 2004 DUI and then resumed drinking because "I really don't want people telling me that I can have a drink or not have a drink . . . I'm a free citizen of this United States and I'm not hurting anybody by sitting in my house and having a drink before I go to bed." *Id.* at 122. He concluded by stating that "I'm a little pissed off – I am here under this kind of condition for a mistake that I had made. When I made this mistake, it was the State saying that I had a problem . . . Then DOE gets involved, and they are doing the same thing to me. I'm aggravated by it." *Id.*

The individual tendered several exhibits to demonstrate that he complied with that portion of his 2004 DUI sentence which required him to attend six alcohol education sessions and complete DUI School. Exhibits A, B, C, D, E, F, G, and H.

## **2. The Individual's Friend**

The individual's friend testified that he and the individual met in 1997 when they were co-workers. Tr. at 94. Their children also play on the same ice hockey team and the two have occasion to socialize in this context. *Id.* at 95. The friend has been around the individual in situations where alcohol is served and has never seen the individual intoxicated. *Id.* at 97-98.

## **3. The DOE Consultant-Psychiatrist's Testimony**

The DOE consultant-psychiatrist testified that the individual technically met the criteria set forth in the Diagnostic and Statistical Manual of Mental Health Disorders, 4<sup>th</sup> edition, text revised (DSM-IV-TR) for substance dependence, alcohol, but the evidence for alcohol dependence was not nearly as strong as it was for substance abuse, alcohol. Tr. at 43. For this reason, the DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse. He also found that during 1977 to 1978, 1982 to 1986, and 2004, the individual was a user of alcohol habitually to excess. According to the DOE consultant-psychiatrist, the individual is minimizing his alcohol consumption, denying that he has an alcohol problem, rationalizing his drinking habits, and deceiving himself in order to continue consuming alcohol. *Id.* at 42.

The DOE consultant-psychiatrist stated at the hearing that the individual was still consuming alcohol when he examined him in June 2005. *Id.* at 33. The individual told the DOE consultant-psychiatrist that he was not really trying to cut down or control his use of alcohol. *Id.* at 39. At the hearing, the DOE consultant-psychiatrist reiterated the recommendations that he had made in his Psychiatric Report about what he considered to constitute adequate evidence of rehabilitation in this case. The evidence recommended is the following:

- (1) Documented evidence of attendance at AA with a sponsor and working on the 12 steps at least once a week for a minimum of 100 hours over at least a year's time

and abstinence from alcohol and all non-prescribed controlled substances for a minimum of two years, or

- (2) Satisfactory completion of a professionally run alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and abstinence from alcohol and all non-prescribed controlled substances for a minimum of three years.

As adequate evidence of reformation, the DOE consultant-psychiatrist reviewed the two options that he posited in his Psychiatric Report:

- (1) Two or three years of abstinence from alcohol and all non-prescribed controlled substances if the individual goes through one of the two rehabilitation programs set forth above, or
- (2) Five years of abstinence from alcohol and all non-prescribed controlled substances if the individual does not go through one of the two rehabilitation programs set forth above.

Ex. 11 at 18. The DOE consultant-psychiatrist reviewed the documentary evidence that the individual submitted at the hearing and opined that the court-ordered treatment that the individual received is not adequate proof of rehabilitation. Tr. at 48. Specifically, he opined that the six two-hour alcohol education classes are “nowhere adequate in terms of treatment.” *Id.* at 48-49. The DOE consultant-psychiatrist pointed out that the Michigan Alcohol Screening Test (MAST) (Ex. B), the Drug Abuse Screening Test (Ex. C), and the Substance Abuse Subtle Screening Inventory (SASSI) (Ex. D) are all unsophisticated paper-and-pencil tests that easily produce false negatives. Tr. at 40-41. He then highlighted the MAST which asked as one of its questions, “Do you feel like a normal drinker?” Ex. B. The individual responded, “Yes.” *Id.* The DOE consultant-psychiatrist then commented that most normal drinkers do not drink one-fifth of whiskey in a night. Tr. at 41. The DOE consultant-psychiatrist then noted other examples of the individual’s responses on the tests that were inaccurate. *Id.* He concluded his testimony on this matter by stating that the results of these various tests are meaningless to him.<sup>5</sup> *Id.*

The DOE consultant-psychiatrist opined that the individual’s irresponsible actions are underscored by his decision to defy a court order and drink during the one-year probationary period following his 2004 DUI. *Id.* at 50. In the end, the DOE consultant-psychiatrist testified that it is “more likely than not that [the individual] will go back to drinking in a nonresponsible way without treatment.” *Id.* at 48.

#### **4. The Testimony of the Individual’s Psychiatrist**

The Individual’s Psychiatrist examined him on one occasion, February 7, 2005. The psychiatrist testified that he did not see the minimization that the DOE consultant-psychiatrist did during his February 2005 examination. *Id.* at 80. The psychiatrist opined

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<sup>5</sup> For example, the results of the SASSI indicate that the individual has a low probability of having a substance dependence disorder. Ex. D. The Drug and Alcohol Assessment evaluation results concluded that the individual’s 2004 DUI was situational in nature. Ex. A.

that there is a certain element of defiance in the individual's personality as exemplified by the individual's decision to drink in defiance of a court order not to do so. *Id.* at 85. The psychiatrist only gave the individual a fair prognosis, explaining that the best evidence of reformation or rehabilitation would be if he were to abstain from alcohol. *Id.* at 86. When asked if he had recommended any type of treatment or counseling for the individual, the psychiatrist responded that his role was forensic, not to treat or make treatment recommendations. *Id.* at 88. The psychiatrist then stated that the individual drinks less when he has custody of his children, perhaps one whiskey on the rocks. *Id.* at 83. On occasions when he does not have custody of his children, he will consume three to four whiskeys on the rocks. *Id.* The psychiatrist believes that external stressors may have caused the individual to consume alcohol to excess. *Id.* at 91. When asked how confident the psychiatrist is that the individual will not drink to excess if he encounters stress, the psychiatrist testified, "it would be something I would be concerned about." *Id.*

## 5. Hearing Officer Evaluation of Evidence

In his response to the Notification Letter, the individual states that "he has no desire to admit or pretend that he currently has any problem with alcohol or that he abuses alcohol in any way." Response at 1. He adds that "he is therefore unwilling to engage in any program that would falsely signify to the NNSA a belief on his part that there is any need for reformation or rehabilitation." *Id.* The individual's testimony at the hearing reaffirmed his position that he does not believe he has a problem with alcohol.

The evidence in this case overwhelmingly supports a finding that the individual suffers from alcohol abuse and has habitually used alcohol to excess at different periods over the last 20 years. Even the individual's own psychiatrist diagnosed him as suffering from alcohol abuse in partial remission and only gave him a fair prognosis for recovery. The individual's failure to acknowledge that he has a problem is a major impediment to any rehabilitation or reformation in this case. With regard to the limited court-ordered treatment that the individual received, the DOE consultant-psychiatrist convinced me that the treatment is not sufficient for rehabilitative purposes. Like the DOE consultant-psychiatrist, I found it troubling that the individual did not answer the questions on the SASSI and MAST truthfully. While the individual's lack of candor on the tests might be attributable to denial, it also served to invalidate the results of those tests which cast the individual's drinking habits in a somewhat favorable light. I am also troubled that the individual continues to consume alcohol and did so in violation of a court order. In the end, the DOE consultant-psychiatrist convinced me that it is more likely than not that the individual will return to drinking in an irresponsible way without treatment.<sup>6</sup>

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<sup>6</sup> It appears from the individual's performance evaluations and his award that the individual's alcohol problem has not, to date, affected his ability to perform his job responsibilities. However, sobriety and reliability on the job do not overcome the security concerns at issue here. *Personnel Security Hearing*, (Case No. VSO-0079), 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996). Excessive consumption of alcohol off the job raises security concerns because of the possibility that a clearance holder may say or do something under the influence of alcohol that compromises national security. *See Personnel Security Hearing*, (Case No. VSO-0106), 26 DOE ¶ 82,767, *aff'd*, *Personnel Security Review*, 26 DOE ¶ 83,009 (1997) (affirmed by OSA 1997). The fact that this apparently has not occurred in the past is no guarantee that it will not occur in the future.

Based on all the foregoing considerations, I have determined that the individual has failed to present any persuasive evidence to allay the security concerns under Criteria H and J. For this reason, I find that the individual has not mitigated the security concerns associated with Criteria H and J in this case.

### **C. Criterion L**

The LSO questions the individual's honesty, trustworthiness and reliability because the individual violated the terms of a court order issued in 2004 that he refrain from consuming alcohol for a one year period. The individual freely admits that he resumed drinking six months after the court order because, as he testified, "he does not like people telling him that he can drink or not drink." Tr. at 122. The individual offered no statement at the hearing that he regretted his decision to violate the court order or any assurance that he would comply with court orders or rules in the future. I am gravely concerned about the belligerent attitude (Tr. at 121-22) that the individual exhibited at the hearing towards authority. It is abundantly clear to me that he could not resist the temptation of alcohol even when required to do so by court order. The fact that the individual willingly violated the terms of a court order raises a concern, in my opinion, that he would knowingly disregard security regulations. In the end, the individual has presented no evidence to mitigate the Criterion L concerns at issue.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F, J, H and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with any of the four criteria at issue here. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: May 22, 2006